

No. 1-13-1161

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

DEUTSCHE BANK TRUST COMPANY,)	Appeal from the
AMERICAS, AS TRUSTEE FOR RAMP 2007SP3,)	Circuit Court of
)	Cook County
Plaintiff-Appellee,)	
)	
v.)	No. 09 CH 13562
)	
KIRTI K. MEHTA; KETAN J. MEHTA;)	
MORTGAGE ELECTRONIC REGISTRATION)	
SYSTEMS, INC.; UNKNOWN OWNERS AND)	Honorable
NON-RECORD CLAIMANTS,)	Allen Price Walker
)	Judge Presiding.
Defendants-Appellants.)	

JUSTICE PIERCE delivered the judgment of the court.
Justices Simon and Liu concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court did not err in denying defendants' third motion to quash service of process when it was untimely filed.

¶ 2 In this mortgage foreclosure action, defendants Kirti K. Mehta (Kirti) and Ketan J. Mehta (Ketan) appeal the circuit court's denial of their third motion to quash service of process brought

pursuant to sections 2-301 and 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-301, 2-1401 (West 2008)). The circuit court denied defendants' third motion to quash service of process as untimely pursuant to section 15-1505.6 of the Illinois Mortgage Foreclosure Law (Foreclosure Law) (735 ILCS 5/15-1505.6 (West 2011)). This appeal followed. For the following reasons, we affirm.

¶ 3

BACKGROUND

¶ 4 This action began when plaintiff filed a complaint to foreclose mortgage against defendants on March 26, 2009. Upon plaintiff's request, the trial court appointed a special process server. According to the April 2, 2009 affidavits of the special process server, defendants were served by substitute service on March 28, 2009 at 6:00 p.m. at their abode located at 7841 Crawford Avenue in Skokie, Illinois. A copy of the complaint and summons were left with "Jitendera Mehta" and additional copies of the summons and complaint were mailed to defendants' home on April 1 (Kirti) and April 2, 2009 (Ketan). The process server's affidavit described "Jitendera Mehta" as a male of Indian race and approximately 61-65 years old. Throughout the litigation, plaintiff continued to serve defendants with copies of its filings at this address. There is nothing in the record to suggest defendants' address changed during the pendency of the litigation.

¶ 5 Defendants did not participate or file an appearance and were subsequently found in default. Upon plaintiff's motion, the circuit court entered a judgment of foreclosure and sale on June 20, 2011. On November 4, 2011, plaintiff mailed defendants a notice of the scheduled foreclosure sale. The property was then sold by judicial sale on December 6, 2011. Plaintiff filed a motion to approve the report of sale and for an order of possession on December 29, 2011.

Plaintiff filed an amended version of that motion on February 6, 2012. Plaintiff's motion was scheduled to be heard on February 29, 2012

¶ 6 The day before the hearing, February 28, 2012, defendants, through counsel, filed an appearance. Defendants' attorney appeared in court at February 29, 2012 hearing. The record does not reflect the substance of that proceeding. However, defendants' counsel prepared an order entering a briefing schedule on plaintiff's motion to approve the foreclosure sale.

Defendants were granted until March 21, 2012 to file a response to plaintiff's motion to approve the sale. The record shows defendants did not file a response to plaintiff's motion. On June 11, 2012, after again appearing in court defendants' attorney prepared an order entering another briefing schedule on plaintiff's "motion to confirm." Defendants were granted leave until July 2, 2012, to file a response to plaintiff's motion. Hearing on the motion was continued until July 25, 2012. The record shows defendants did not file a response to plaintiff's motion.

¶ 7 Instead, on July 2, 2012, defendants filed their first motion to quash service of process, disputing the substitute service as described in the process server's affidavit and disputing that the summons and complaint were sent or received in the mail. The motion was supported by defendants' joint affidavit. The circuit court denied defendants' motion without prejudice on July 25, 2012. On that same date, the circuit court entered an order approving the report of sale and distribution and also entered an order of possession in plaintiff's favor. Subsequently, on August 21, 2012, defendants filed their second motion to quash service of process again disputing the substitute service. On September 7, 2012, the circuit court denied defendants' second motion to quash service of process without prejudice.

¶ 8 On October 19, 2012, defendants filed their third motion to quash service of process

pursuant to sections 2-301(a) and 2-1401(f) of the Code. Defendants argued that they were not served via substitute service because: (1) there is no Jitendera Mehta, but rather a Jitendrabhai Mehta, who was never given a summons or complaint; (2) the affidavits of service used passive voice and do not show the affiant swore to having personally served process to anyone; and (3) the process server was an independent contractor of the appointed special process server entity and therefore, was not authorized to serve process in this case. The motion was supported by the defendants' affidavits stating they regularly check their mailbox and have never received a summons or copy of the complaint in the mail for this case. Also attached to the motion was the affidavit of Jitenderbhai Mehta, who stated he has never been given a summons or a copy of the complaint in this case. The circuit court denied the third motion to quash service on March 8, 2013 "pursuant to 735 ILCS 5/15-1505.6 with prejudice." A hearing was held on the motion, however a transcript of that hearing does not appear in the record. The circuit court's denial of the third motion to quash service of process is at issue in this appeal.

¶ 9

ANALYSIS

¶ 10 Defendants argue the circuit court erred in denying their third motion to quash service of process as untimely under section 15-1505.6 of the Foreclosure Law. We review *de novo* a trial court's denial of a motion to quash service based on documentary evidence only. *Aurora Loan Services, LLC v. Kmiecik*, 2013 IL App (1st) 121700, ¶ 15. Defendants, without the citation to any legal authority, contend that section 15-1505.6 of the Foreclosure Law does not apply in this instance.

¶ 11 Section 15-1505.6 of the Foreclosure Law provides in pertinent part:

"(a) In any residential foreclosure action, the deadline for filing a motion to

dismiss the entire proceeding or to quash service of process that objects to the court's jurisdiction over the person, unless extended by the court for good cause shown, is 60 days after the earlier of these events: (i) the date that the moving party filed an appearance; or (ii) the date that the moving party participated in a hearing without filing an appearance." 735 ILCS 5/15-1505.6 (West 2011).

¶ 12 In the present case, defendants filed an appearance through counsel on February 28, 2012. The 60th day thereafter was April 30, 2012. Defendants' motions to quash service of process were filed on July 2, 2012; August 21, 2012 and October 19, 2012. Defendants concede they filed an appearance on February 28, 2012 and that the statutory time to file a motion to quash service of process expired on April 30, 2012. However, defendants argue that section 15-1505.6 is not applicable to this case because the circuit court denied defendants' second motion to quash service of process without prejudice and therefore, implicitly allowed the defendants additional time to "re-file" the third motion to quash service. Defendants also contend the circuit court gave them the "impression" that defendants would have leave to file a third motion to quash service of process and an evidentiary hearing would be conducted.

¶ 13 The record does not include a transcript of the proceedings or bystanders report. Although, defendants reference the circuit court's findings in denying the first and second motions to quash service, we have no record of those proceedings and are not informed by the record of the reasons for the court's decisions on those motions. We will not rely on defendants' "impressions" of the circuit court's proceedings. The appellant has the burden to provide us with a sufficiently complete record. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984) (in the absence of a complete record we presume the trial court's order was in conformity with the law

and had a sufficient factual basis and any doubts therefrom are resolve against the appellant).

¶ 14 Defendants do not advance any legal basis that would arguably justify a departure from the clear time limits proscribed in section 15-1505.6 of the Foreclosure Law. See Ill. S. Ct. R. 341 (h)(7) (eff. July 1, 2008); *Dillon v. Evanston Hospital*, 199 Ill. 2d 483, 493 (2002) (" 'A court of review is entitled to have the issues clearly defined and to be cited pertinent authority. A point not argued or supported by citation to relevant authority fails to satisfy the requirements of Rule 341([h])(7).' "). In applying a statute, courts are obligated to effectuate the intent of the legislature as indicated by the language used in the statue. *Holtz v. Waggoner*, 377 Ill. App. 3d 598, 600 (2007). Where a statute's language is clear and unambiguous, "the plain language must be given effect without exception." *Id.* Section 15-1505.6 clearly and unambiguously imposes a 60 day deadline for the filing of motions to quash service of process from the time a defendant files an appearance. The record is clear: defendants' first, second and third motion to quash service of process were not filed within the statutory deadline. Section 15-1505.6 permits an extension for good cause shown, however, no such extension or request for an extension appear in the record. Therefore, defendants' third motion to quash service of process was untimely under section 15-1505.6 of the Foreclosure Law as were their first and second motions to quash service as evidenced by the record. In short, nothing in the record remotely indicates the defendants at any point filed any motion to quash service within 60 days of filing their appearance on February 28, 2012. This failure to comply with the Foreclosure Law is fatal to their appeal.

¶ 15 Defendants also argue they were entitled to an evidentiary hearing and that they were not properly served. However, because defendants' third motion to quash service of process was untimely and this appeal is disposed of on this basis, we need not reach the remaining arguments.

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¶ 16

CONCLUSION

¶ 17 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 18 Affirmed.